

FILED

OCT 30 2009

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAPOSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 09-32327-D-13L
)	
PAULA CORDOVA,)	Docket Control Nos. SL-1
)	SL-2
Debtor.)	SL-3
)	
)	Date: October 13, 2009
)	Time: 1:00 p.m.
)	Dept: D

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MEMORANDUM DECISION

On August 5, 2009, the United States Department of Agriculture, Rural Development Agency ("Rural Housing") filed an Objection of the United States to Treating Its Purchase Money Mortgage on the Debtor's Residence as Four Separate Mortgages (the "Objection"), bearing Docket Control Nos. SL-01, SL-02, and SL-03. For the reasons set forth below, the court will overrule the Objection.

I. INTRODUCTION

The debtor filed her chapter 13¹ petition commencing this case on June 16, 2009. At the same time, the debtor filed a proposed chapter 13 plan containing three Attachments M-3 -- Motions to Value Collateral (the "Motions"), by which the debtor

1. Unless otherwise indicated, all Code, chapter, section and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 seeks to value at zero three alleged secured claims of Rural
2 Housing evidenced by deeds of trust against the debtor's property
3 at 210 Palin Avenue, Galt, California (the "Property"), those
4 claims to be treated instead as general unsecured claims.²

5 Rural Housing objects to the Motions, arguing that the loan
6 documents the debtor signed in connection with her purchase of
7 the Property were all part of a single transaction; in essence,
8 that Rural Housing has a single purchase money mortgage against
9 the Property that the debtor cannot bifurcate into secured and
10 unsecured portions.

11 II. ANALYSIS

12 This court has jurisdiction over the Objection pursuant to
13 28 U.S.C. §§ 1334 and 157(b)(1). The Objection is a core
14 proceeding under 28 U.S.C. § 157(b)(2)(B).

15 Pursuant to § 506(a)(1), "a claim is secured only to the
16 extent of the value of the property on which the lien is fixed;
17 the remainder of that claim is considered unsecured." United
18 States v. Ron Pair Enterprises, 489 U.S. 235, 239 (1989). In a
19 chapter 13 case, if a claim is secured only by the debtor's
20 primary residence and the value of the property is sufficient to
21 secure the claim at least in part, § 506(a)(1) may not be used to
22 bifurcate the claim. § 1322(b)(2); Nobelman v. American Savings
23 Bank, 508 U.S. 324, 327-32 (1993). However, if the value of the
24 property is such that it provides no security at all for the
25 claim, that is, if the claim is totally unsecured, § 506(a)(1)

26
27 2. The debtor identified the three Attachments M-3 as
28 Docket Control Nos. SL-001, SL-002, and SL-003; hence Rural
Housing's use of the those docket control numbers on the
Objection.

1 may be used to bifurcate the claim and "strip off" the lien.
2 Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1226-
3 27 (9th Cir. 2002); Lam v. Investors Thrift (In re Lam), 221 B.R.
4 36, 41 (9th Cir. BAP 1997).

5 The debtor contends that the value of the Property is
6 \$109,000 and that Rural Housing has four liens against the
7 Property -- in the amounts of \$141,357.22, \$84,172, \$3,000, and
8 \$2,600 in order of priority.³ Because the amount secured by the
9 most senior lien, \$141,357.22, exceeds the value of the Property,
10 the debtor contends there is no value in the Property to secure
11 the two remaining liens, which should therefore be valued at
12 zero.

13 The loan amounts and corresponding liens derive as follows.
14 When the debtor purchased the Property, in May 2003, Rural
15 Housing allowed her to assume the seller's Rural Housing loan,
16 then having a balance of \$112,603.27, Objection, Ex. 4, secured
17 by a deed of trust recorded November 6, 1998. Id., Ex. 1. Rural
18 Housing loaned the debtor the remaining amount of the purchase
19 price, \$82,390. Id., Ex. 4. A deed of trust securing an
20 indebtedness of \$82,390 was recorded on May 13, 2003, id.,
21 presumably the day escrow closed on the debtor's purchase of the
22 house. Rural Housing allowed the debtor to make certain repairs
23 to the Property after the close of escrow, and for that purpose,
24 loaned her an additional \$3,000 on October 9, 2003 and \$2,600 on
25 November 9, 2003. Objection, Ex. 6. A deed of trust securing

26
27 3. As will be seen below, there are actually three liens
28 securing four loans -- two of the loans, the \$3,000 and \$2,600
loans, are secured by a single deed of trust.

1 these two loans was recorded on March 16, 2004. Id.⁴

2 Rural Housing does not for the purpose of the Objection
3 dispute the debtor's valuation of the Property. Instead, it
4 contends its loans to the debtor, including her assumption of the
5 senior loan, the new \$82,390 loan, and the two loans for repairs,
6 comprised a single transaction whereby the debtor purchased the
7 Property.

8 [The debtor] cannot treat each promissory note or
9 assumption agreement as being a separate loan and
10 allege that the three "junior" liens have no equity
11 because the assumption agreement and the three
12 promissory notes that [the debtor] executed and
delivered to Rural Housing in 2003 are all part of the
purchase price she agreed to pay for [the Property],
which purchase price Rural Housing lent her.

13 Objection, 2:27-3:3.⁵

14 Rural Housing cites Nobelman as support for its theory that
15 because value of at least \$109,000 secures "the Rural Hous[ing]
16 mortgage," the debtor cannot bifurcate "it" into secured and
17 unsecured portions. Objection, 3:3-6. The suggestion is that
18 all the loans comprise a single mortgage.⁶

19 _____
20 4. In addition to the assumption agreement, the debtor
21 signed individual promissory notes in favor of Rural Housing, for
\$82,390, \$3,000, and \$2,600 respectively. Objection, Exs. 4, 6.

22 5. The theory that the loans for repairs, although made
23 months later, were a part of the purchase is based on the
24 suggestion that the repairs were necessary to bring the house up
25 to Rural Housing's standards, and that absent the debtor's
26 agreement to make those repairs, Rural Housing would not have
assisted with her purchase of the Property. See Declaration of
Ralph Westlin, filed August 5, 2009, §§ 5, 19, referring to "any
and all repairs and USDA upgrade requirements," and "repairs to
bring the Palin house up to USDA standards."

27 6. In a slightly modified version of the Objection, filed
28 August 7, 2009, Rural Housing refers to "the Debtor's improper
(continued...)

1 Rural Housing cites no authority, and the court is aware of
2 none, for the proposition that different obligations secured by
3 different deeds of trust together comprise a single "mortgage" or
4 any other type of single charge or encumbrance against real
5 property.

6 It is clear from Rural Housing's own documents that the
7 debtor's obligations secured by each of the three deeds of trust
8 are separate and distinct from each other. None of the documents
9 purports to cross-collateralize any of the obligations, although
10 Rural Housing could easily have chosen to structure the
11 transaction in that fashion.

12 Although Rural Housing suggests it afforded the debtor some
13 advantage when it "allowed" her to assume the senior loan,
14 Objection at 2:6-8, the obligations evidenced by the assumption
15 agreement and the \$82,390 promissory note carry the same interest
16 rate and precisely the same maturity date, May 9, 2041.⁷ Rural
17 Housing suggests no reason it could not have used a single note
18 and deed of trust for the entire amount of the purchase price.
19 However, even if Rural Housing could demonstrate an advantage to
20 the debtor from the structuring of the transaction, there is no
21 authority to suggest that advantage to the borrower is the test
22 in determining the effect of layered financing under § 506(a).

23
24 6. (...continued)
25 attempt to strip its first position purchase money mortgage from
26 the Debtor's residence." Objection of the United States to
Treating Its Purchase Money Mortgage as Four Separate Mortgages
filed August 7, 2009, 1:20-22. The court notes also that Rural
Housing has filed a single proof of claim, for \$256,775.05.

27 7. Further, the monthly payments specified in the assumption
28 agreement and the promissory note are both in the precise amounts
necessary to fully amortize the loans over their 38-year term.

1 Finally, the two loans for repairs were made five and six
2 months after the debtor's purchase of the property; the deed of
3 trust securing them was not recorded until ten months after the
4 purchase transaction closed. These loans have a different
5 interest rate and maturity date from the assumed loan and the
6 \$82,390 loan. There is no legal or logical reason to treat them
7 as a part of the purchase transaction secured by a single
8 security instrument.

9 Most significant, Rural Housing could not declare a default
10 under one of the promissory notes but then foreclose under the
11 deed of trust securing a different note; by the same token, the
12 debtor could pay off one of the obligations and require
13 reconveyance of the deed of trust securing that particular
14 obligation. The fact that the assumed loan and the \$82,390 loan
15 together comprised the purchase price of the Property does not
16 tie them together for purposes of § 506(a) any more than if the
17 debtor had assumed the first with Rural Housing but borrowed the
18 remainder of the purchase price from a third party or parties
19 through second and/or third deeds of trust.

20 III. Conclusion

21 The court concludes that the three sets of obligations --
22 (1) those evidenced by the assumption agreement and secured by
23 the senior deed of trust, (2) those evidenced by the \$82,390
24 promissory note and secured by the second deed of trust, and (3)
25 those evidenced by the \$3,000 and \$2,600 promissory notes and
26 secured by the third deed of trust -- are independent obligations
27 secured by stand-alone deeds of trust. Because the amount due
28 under the assumption agreement exceeds the value of the property,

1 Rural Housing's claims under the \$82,390, \$3,000, and \$2,600
2 promissory notes are entirely unsecured under § 506(a).

3 For the reasons set forth above, the Objection will be
4 overruled. The court will issue an appropriate order.

5 Dated: October 29, 2009

Robert S. Bardwil
6 ROBERT S. BARDWIL
7 United States Bankruptcy Judge
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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document on today's date to each of the parties listed below:

Office of the US Trustee
501 "I" Street, 7th Floor
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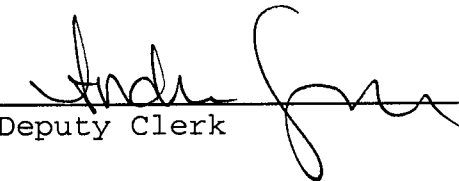
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DATE: OCT 30 2009


Deputy Clerk